

BILL NO. G-71-01-12

GENERAL ORDINANCE NO. G-*Withdrawn*

AN ORDINANCE prohibiting the sale, distribution, advertisement, promotion or exhibition of obscene matter or public performances in the City of Fort Wayne, Indiana, and providing penalties.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. DEFINITIONS. As used in this Ordinance

(a) A thing is "obscene" if, by contemporary community standards, and considered as a whole, its predominant appeal is to prurient interest. As a matter of public policy, obscenity is utterly without redeeming social importance and constitutes a public nuisance which should be abated.

(b) "Prurient interest" is defined as a shameful or morbid interest in nudity, sex or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for, or directed to a specially susceptible audience, the subject matter shall be judged with reference to such audience. For the purpose of Section 6 of this Ordinance, when the subject matter is distributed or exhibited to minors under 18 years of age, the subject matter shall be judged with reference to an average person in the community of the actual age of the minor to whom such material is distributed, or exhibited. In all other cases, the subject matter shall be judged with reference to the average person in the community.

(c) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, play, night club performance, television production, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

(d) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(e) "Distribute" means to transfer possession of, whether with or without consideration, by any means.

(f) "Knowingly" means having actual or constructive knowledge of the obscene contents of the subject matter. A person has constructive knowledge of the obscene contents, if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the material, and the failure to inspect the contents is either for the purpose of avoiding such disclosure or is due to reckless conduct.

(1) "Reckless conduct" is conduct which consciously disregards a substantial and unjustifiable risk that matter may be obscene. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that an average person would observe in the actor's situation under like circumstances.

SECTION 2. AFFIRMATIVE DEFENSE. This Ordinance shall not apply to persons who may possess or distribute obscene matter or participate in conduct otherwise prescribed by this Ordinance when such possession, distribution or conduct occurs in the course of law enforcement activities, or in the course of bona fide scientific, educational, or comparable research or study, or like circumstances of justification. If this issue is not presented by the prosecution's evidence, the defendant may raise the same as an affirmative defense by presenting evidence thereon. Where raised, the prosecution must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue.

SECTION 3. JURY TRIAL. Criminal prosecutions and other proceedings involving the ultimate issue of obscenity (as distinguished from the issue of "probable cause") may be tried by jury.

SECTION 4. PRESUMPTION. Every person is presumed to have knowledge of the standards that exist in the community and what the jury or trier of fact may declare to be obscene.

SECTION 5. GENERAL SALE OR DISTRIBUTION, ETC., OF OBSCENE MATTER; PENALTY. Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into Fort Wayne, Indiana, for sale or distribution or exhibition; or in Fort Wayne, Indiana, either (1) prepares, publishes, prints, exhibits, distributes, or offers to distribute; or (2) has in his possession with intent to distribute or to exhibit or offer to distribute; any obscene matter is guilty of a violation of this ordinance.

SECTION 6. DISTRIBUTION OF OBSCENE MATTER TO MINOR; PENALTY. Every person, who with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age, knowingly sends or causes to be sent, exhibits, distributes, or offers to distribute any obscene matter to a minor under 18 years of age, is guilty of a violation of this ordinance.

SECTION 7. HIRING, EMPLOYING, ETC., MINOR TO ENGAGE IN ACTS DESCRIBED IN SECTION 4: PENALTY. Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age, hires, employs, or uses such minor to do or assist in doing any of the acts described in Sections 5 and 6 is guilty of a violation of this ordinance.

SECTION 8. ADVERTISEMENT, PROMOTION OF SALE, ETC., OF MATTER REPRESENTED TO BE OBSCENE: PENALTY. Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material for, or who otherwise advertises or promotes the sale, distribution, or exhibition of matter represented or held out by him to be obscene, whether or not such matter exists in fact, or is obscene, is guilty of a violation of this ordinance.

SECTION 9. PARTICIPATION IN LEWD EXPOSURE OR SIMULATED ACTS OF SEXUAL INTERCOURSE OR PERVERSION AS A PART OF A PLAY, ETC.

(a) Every person who, during the course of a play, night club act, motion picture, television production, or other exhibition, or mechanical reproduction of human conduct, engages in any

lewd exposure or simulated act of sexual intercourse or perversion, which if engaged in offstage or offscreen and in public, would be subject to prosecution as the misdemeanor crime of indecent exposure, or as the felonious crime against nature, is guilty of a violation of this ordinance.

(b) Every person who procures, counsels, or assists any person to engage in such conduct, or who knowingly exhibits, or procures, counsels or assists in the exhibition of a motion picture, television production or other mechanical reproduction containing such conduct is guilty of a violation of this ordinance.

#### SECTION 10. SINGING OBSCENE SONG, BALLAD, ETC.; PENALTY.

(a) Every person who sings or speaks any obscene song, ballad, or other words in any play, night club act, motion picture, television production, or other exhibition or medium reproducing human conduct, or in any public place, is guilty of a violation of this ordinance.

(b) Every person who procures, counsels, or assists any person to engage in such conduct, or who knowingly exhibits, or procures, counsels, or assists in the exhibition of a motion picture, television production, or other mechanical reproduction containing such conduct, is guilty of a violation of this ordinance.

SECTION 11. REQUIRING PURCHASER OR CONSIGNEE TO RECEIVE OBSCENE MATTER AS CONDITION TO SALE, ETC.; PENALTY. Every person, who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be obscene, or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the return of such matter, is guilty of a violation of this ordinance.

SECTION 12. CONSPIRACY. A conspiracy of two or more persons to commit any of the crimes prescribed by this Ordinance is punishable as a violation of this ordinance.

SECTION 13. SPECIAL VERDICT. At the trial of any action

arising hereunder, the jury shall render a special verdict, or, if jury trial be waived, the court shall enter special findings, on the issue of obscenity, in addition to a general verdict or general findings. The special verdict or findings on the issue of obscenity shall be: "We find (the court finds) the \_\_\_\_\_ (title or description of matter) to be obscene," or, "We find (the court finds) the \_\_\_\_\_ (title or description of matter) not to be obscene," as each item is or is not found obscene. A special verdict shall not be admissible as evidence in any other proceeding, nor shall it be res judicata of any question in any other proceeding.

#### SECTION 14. PENALTY.

(a) Any person who violates any of the section of this ordinance shall be fined in any sum not to exceed Three Hundred Dollars (\$300.00) or imprisoned for not more than six (6) months or both.

SECTION 15. INJUNCTIVE RELIEF. In addition to the remedies herein provided, the City Attorney of the City of Fort Wayne, Indiana, is hereby authorized and empowered to institute proceedings to obtain an injunction against any existing or impending violation of the provisions of this ordinance. Said proceeding may be instituted by the City Attorney upon the filing of a verified complaint by any citizen of the City of Fort Wayne, Indiana, alleging a violation of this ordinance and such action shall be entitled "City of Fort Wayne ex rel. \_\_\_\_\_, petitioner, vs. \_\_\_\_\_, respondent."

#### SECTION 16. CONTRABAND. DESTRUCTION OF OBSCENE MATTER OR ADVERTISEMENT OF MATTER REPRESENTED TO BE OBSCENE.

(a) Obscene matter and advertisements for matter represented to be obscene are contraband and shall be destroyed.

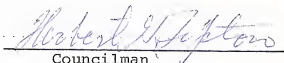
(b) Upon the conviction of the accused or rendition of a court order declaring such matter to be contraband and subject to confiscation, the court shall, when such judgments become final, order, upon five days' notice to the defendant, any matter or advertisement, in respect whereof the accused stands convicted, and which remains in possession or under the control of the District Attorney or any law enforcement agency, to be destroyed,

and the court shall cause to be destroyed any such material in its possession or under its control, retaining only such copies as are necessary for law enforcement purposes.

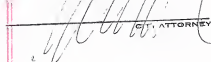
SECTION 17. PREPARING, ETC., OBSCENE MATTER OR ADVERTISING ELSEWHERE FOR SALE OR DISTRIBUTION IN FORT WAYNE. EXTRADITION. Every person, whether or not he is a citizen of or present in Fort Wayne, who knowingly prepares, publishes, or prints obscene matter for sale or distribution in Fort Wayne, or who knowingly sends or causes to be sent, or brings or causes to be brought by any means, into Fort Wayne, Indiana, for sale or distribution herein, any obscene matter, or any advertising promoting the sale or distribution of matter represented or held out to be obscene, whether or not such matter exists in fact or is obscene, shall be subject to the penalties of this ordinance.

SECTION 18. SEVERABILITY. If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 19. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor, and legal publication thereof.

  
Councilman

APPROVED AS TO FORM  
AND LEGALITY

  
CITY ATTORNEY

Read the first time in full and on motion by \_\_\_\_\_ seconded by \_\_\_\_\_ and duly adopted, read the second time by title and referred to the Committee on \_\_\_\_\_ (and to the City Plan Commission for recommendation) (and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: \_\_\_\_\_

CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_ seconded by \_\_\_\_\_ and duly adopted, placed on its passage.

Passed (LOST) by the following vote:

AYES \_\_\_\_\_, NAYS \_\_\_\_\_, ABSTAINED \_\_\_\_\_, ABSENT \_\_\_\_\_ to-wit:

Burns	_____	_____	_____	_____
Hinga	_____	_____	_____	_____
Kruse	_____	_____	_____	_____
Nuckols	_____	_____	_____	_____
Moses	_____	_____	_____	_____
Schmidt, D.	_____	_____	_____	_____
Schmidt, V.	_____	_____	_____	_____
Steir	_____	_____	_____	_____
Talarico	_____	_____	_____	_____

Date \_\_\_\_\_

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (General) (~~Annexation~~) (~~Special~~) (~~Appropriation~~) Ordinance (~~Resolution~~) No. 8- on the \_\_\_\_\_ day of \_\_\_\_\_, 197 2.

ATTEST:

(SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 197 2 at the hour of 8:30 o'clock PM.M.,E.S.T.

CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.M.,E.S.T.

MAYOR

Read the first time in full and on motion by Tipton seconded by

Robinson and duly adopted, read the second time by title and referred to the (Committee on) Regulations (and to the City Plan Commission for recommendation) (and Public Hearing to be held after due legal notice, at the Council Chambers, City Hall, Fort Wayne, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_ 196\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 1-12-71

Frank J. Donahoe  
City Clerk

Read the third time in full and on motion by \_\_\_\_\_

seconded by \_\_\_\_\_ and duly adopted, placed on its passage.

Passed (LOST) by the following vote:

AYES \_\_\_\_\_, NAYS \_\_\_\_\_, ABSTAINED \_\_\_\_\_, ABSENT \_\_\_\_\_ to-wit:

Adams	_____	_____	_____	_____
Dunifon	_____	_____	_____	_____
Fay	_____	_____	_____	_____
Geake	_____	_____	_____	_____
Nuckols	_____	_____	_____	_____
<del>Robinson</del>	_____	_____	_____	_____
Rousseau	_____	_____	_____	_____
Steigerwald	_____	_____	_____	_____
Tipton	_____	_____	_____	_____

Date 1-26-71

City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(Zoning Map)~~ (General) ~~(Annexation)~~ (Special) ~~(Appropriation)~~ Ordinance (Resolution) No. 8

on the 26<sup>th</sup> day of January, 19671.

ATTEST:

(SEAL)

City Clerk

Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27<sup>th</sup> day of January, 19671 at the hour of 8:30 o'clock PM.M.,E.S.T.

City Clerk

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 196\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.M.,E.S.T.

Mayor



WITHDRAWAL OF GENERAL ORDINANCE NO. G-71-01-12

On motion by Councilman Talarico, Bill No. G-71-01-12  
seconded by Hinga

AN ORDINANCE prohibiting the sale, distribution, advertisement, promotion or exhibition of obscene matter or public performances in the City of Fort Wayne, Indiana, and providing penalties.

that this ordinance No. G-71-01-12 is hereby withdrawn for no further action by the Common Council of the City of Fort Wayne, on Bill No. G-71-01-12.

PASSED	(LOST)	by the following vote:			
AYES	NAYS	ABSTAINED	ABSENT	to-wit	
Burns	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Hinga	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Kraus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nickols	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Moses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Schmidt, D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Schmidt, V.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Stier	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Talarico	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Date: July 25, 1972

\_\_\_\_\_  
City Clerk

ATTEST: (SEAL)

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Presiding Officer